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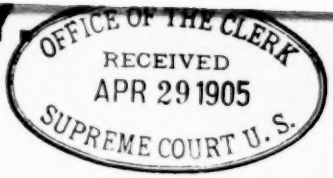

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 171.

A. Y. CHRISMAN ET AL., PLAINTIFFS IN ERROR,

vs.

E. O. MILLER ET AL.

PETITION FOR REHEARING.

J. C. CAMPBELL,
W. H. METSON,
Attorneys and Counsel for Plaintiffs in Error and Petitioners.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 15778

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A. Y. CHRISMAN ET AL., PLAINTIFFS IN ERROR,

vs.

E. O. MILLER ET AL., DEFENDANTS IN ERROR.

OPINION FILED APRIL 3, 1905.

PETITION FOR REHEARING.

The plaintiffs in error most respectfully apply to the Supreme Court of the United States for a rehearing of this cause upon the ground that the main question—the most important point—submitted to it for decision in this cause has not been even mentioned by the Supreme Court of the United States in its opinion.

Said point appears in the findings of the trial court, and was presented in all the briefs filed on behalf of plaintiffs in error and in the oral argument. It is that one locator is given 160 acres of placer land, when the Statutes of the United States give him the right to 20 acres only.

This was the point upon which Chief Justice Beatty, of the supreme court of California, dissented (Record, pp. 121–128).

Section 2331 of the Revised Statutes of the United States.

Acknowledging everything that is said in the opinion of the Supreme Court of the United States, filed on April 3, 1905, this question is still undecided, and we respectfully submit that after the time, labor, and expenditure that has been given in presenting this most important point to the Supreme Court of the United States we should be excused for petitioning for a rehearing.

The point that we make is a part of the findings of the trial court, and it appears specifically from findings 8, 9, 10, and 15 (Record, pp. 23–25).

The Supreme Court of the United States, in its opinion filed on April 3, 1905, confirms the doctrine laid down by section 2320 of the Revised Statutes that no location of a mining claim shall be made until the *discovery* of the vein or lode within the limits of the claim located, and therefore it follows that until discovery no rights accrue, and, if so, our point should be good.

To state the point as clearly as we can, it is found by the trial court in the findings mentioned that *without discovery* eight men posted a notice and put up monuments marking the boundaries of 160 acres of public lands on December 31, 1896; that thereafter, on the 31st day of July, 1897, seven of these men conveyed to the eighth, E. O. Miller, and this eighth man, Miller, *still without discovery*, on the 17th day of September, 1897, leased to the Home Oil Company, and the Home Oil Company sunk a well and got a flow of petroleum, and that this well and the oil exuding therefrom *was* the ONLY DISCOVERY upon said lands. Therefore, if the Supreme Court of the United States is right—if section 2320 and section 2331 of the Revised Statutes mean anything—this decision gives to Miller 160 acres of land, when the law says he shall have but 20.

That this is the law was so held in Durant *vs.* Corbin, 94 Fed., 382. It is so laid down in Lindley on Mines, section 450, and by Snyder on Mines, section 315.

These propositions were duly presented to the Supreme

Court of the United States in the brief of plaintiffs in error, at pages 63 to 86, and in the reply brief for plaintiffs in error, at pages 7 and 8.

Notwithstanding that the Supreme Court of the United States has in this opinion, as we understand it, overruled Judge Ross, of the circuit court for the ninth circuit, in the case of Nevada Sierra Oil Co. *vs.* Home Oil Co., at pages 681–683, 97 Federal Reporter, and again overruled him in the 98th Federal Reporter, at pages 675 and 676, and the case of Erhardt *vs.* Boaro, 113 U. S., pages 527 and 536, and Book *vs.* Mining Co., 58 Federal Reporter, pages 106 and 120, nevertheless, it having spoken, we gladly accept the opinion in this case as a correct exposition of the law, but we most respectfully urge the Supreme Court of the United States that it has evidently inadvertently failed to mention or pass upon the salient point presented on the appeal, and request a rehearing.

Respectfully submitted.

J. C. CAMPBELL,
W. H. METSON,
Attorneys and Counsel for Plaintiffs in Error and Petitioners.

CERTIFICATE OF COUNSEL.

We, the undersigned attorneys and counsel for said A. Y. Chrisman *et al.*, plaintiffs in error and petitioners herein, do hereby certify that in our opinion there is just ground in point of law for the allowance of a rehearing in said cause.

J. C. CAMPBELL,
W. H. METSON,
Attorneys and Counsel for Plaintiffs in Error and Petitioners.